

REMARKS/ARGUMENTS

In response to the restriction requirement issued April 2, 2003 in the above-referenced patent application, Applicants elect for prosecution the invention of Group I, claims 1-22. Claims 23-37 have been canceled as drawn to a non-elected invention. Claims 9, 10 and 22 have been amended for internal consistency. Applicants reserve the right to prosecute the claims of the non-elected invention in one or more continuing applications.

The restriction requirement further contained a requirement for election of a single disclosed peptide sequence. It was unclear whether this further requirement was a restriction requirement or requirement for election of species. Clarification is requested. However, regardless of how the requirement is characterized, Applicants traverse the requirement to elect a single peptide species. MPEP §803.04 clearly states as follows:

to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided *sua sponte* to partially waive the requirements of 37 CFR 1141 *et seq.* and permit a reasonable number of nucleotide sequences to be claimed in a single application.

MPEP §803.04, citing 1192 O.G. 68 (November 19, 1996).

The MPEP further states that “normally ten sequences constitutes a reasonable number for examination purposes.” The present application is directed to peptide sequences rather than nucleotide sequences; however, the rationale that a reasonable number (i.e., ten) of such sequences may be examined without undue burden on the Office remains the same.

Accordingly, Applicants respectfully request that the following peptide sequences be examined in this application: SEQ ID NO:8 (Emp-1), SEQ ID NO:19 (Emp-6), SEQ ID NO: 20 (Emp-9), SEQ ID NO:17 (Emp-23) and SEQ ID NO: 21 (Emp-27).


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PATENT

In order to be fully responsive in the event that the requirement for election of a single sequence is maintained, Applicants elect SEQ ID NO:19 (Emp-6) for further prosecution. If the foregoing requirement to elect a single sequence is characterized as a restriction requirement, Applicants again reserve the right to prosecute claims drawn to the non-elected inventions in one or more continuing applications. If the foregoing requirement to elect a single sequence is a requirement for election of species, Applicants make the election with the understanding that claims readable on the non-elected species will be withdrawn from consideration until such time as it is determined that generic claims are allowable, and reserving the right to prosecute claims covering the non-elected species in one or more continuing applications.

Respectfully submitted,

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